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December 23, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal
Date of Filing: November 4, 2002
Case No.: TIA-0015

XXXXXXXXXXXX (the applicant) applied to the Office of Worker Advocacy of the Department of Energy (DOE) for DOE assistance in filing for state workers' compensation benefits on behalf of her late husband, XXXXXXXXXXXX (the worker). The DOE Office of Worker Advocacy determined that the worker was not a DOE contractor employee and, therefore, not eligible for the assistance program. The applicant appeals that determination. As explained below, the worker's stated employer was a DOE contractor and, therefore, we are remanding the application to the DOE Office of Worker Advocacy for further consideration.

I. Background

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the EEOICPA or the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. Parts A and D of the Act provide benefits to certain workers.

Part A of the Act provides federal monetary and medical benefits to workers having radiation-induced cancer, beryllium illness, or silicosis. Eligible workers include DOE employees, DOE contractor employees, as well as workers at an "atomic weapons employer facility" in the case of radiation-induced cancer, and workers at a "beryllium vendor" in the case of beryllium illness. See 42 U.S.C. § 73841(1).

Part D of the Act provides for a DOE program to assist "Department of Energy contractor employee[s]" in filing for state workers' compensation benefits for illnesses caused by exposure to toxic

substances at DOE facilities. 42 U.S.C. § 7385o. The DOE Office of Worker Advocacy is responsible for this program and has a web site that provides extensive information concerning the program. 1/

Pursuant to an Executive Order, the DOE has published a list of facilities covered by the Act and has designated next to each facility whether it falls within the Act's definition of "atomic weapons employer facility," "beryllium vendor," or "Department of Energy facility." 66 Fed. Reg. 31,218 (June 11, 2001) (current list of facilities). 2/ The DOE's published list also refers to the DOE Office of Worker Advocacy web site for additional information about the facilities. 66 Fed. Reg. 31,219 (citing www.eh.doe.gov/advocacy).

This case concerns Part D of the Act, the portion of the Act that provides for DOE assistance to DOE contractor employees in filing for state workers' compensation benefits. Part D establishes a DOE process through which independent physician panels consider whether employee illnesses were caused by exposure to toxic substances at DOE facilities. If a physician panel issues a determination favorable to the employee, the DOE assists the applicant in filing for state workers' compensation benefits. In addition, the DOE instructs the contractor not to oppose the claim unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs in opposing the claim. 42 U.S.C. § 7385o(e)(3). The DOE has issued regulations to implement Part D of the Act. These regulations are referred to as the Physician Panel Rule. See 67 Fed. Reg. 52841 (August 13, 2002) (to be codified at 10 C.F.R. Part 852). As stated above, the DOE Office of Worker Advocacy is responsible for this program.

In her application for DOE assistance in filing for state workers' compensation benefits, the applicant stated that the worker was employed at the Huntington Pilot Plant in Huntington, West Virginia, from around 1952 to 1964. The DOE Office of Worker Advocacy determined that the worker was employed by an atomic weapons employer, not a DOE contractor. See September 10, 2002 Letter from DOE Office of Worker Advocacy to the applicant. Accordingly, the DOE Office of

1/ See www.eh.doe.gov/advocacy.

2/ See Executive Order No. 13,179 (December 7, 2000). The DOE first published a list in January 2001, 66 Fed. Reg. 4003 (January 17, 2002), and a revised list in June 2001.

Worker Advocacy determined that the applicant was not eligible for DOE assistance in filing for state workers' compensation benefits. In her appeal, the applicant contests that determination.

II. Analysis

The issue on appeal is whether the Huntington Pilot Plant was a DOE facility. As explained below, it is undisputed on appeal that the Huntington Pilot Plant was a DOE facility.

In response to the appeal, we reviewed the DOE's published list of facilities, as well as the DOE Office of Worker Advocacy web site facility descriptions. The DOE's published list of facilities designates the Huntington Pilot Plant as "AWE" and "DOE," the codes for "atomic weapons employer facility" and "DOE facility." 66 Fed. Reg. 31,222. In contrast, the DOE Office of Worker Advocacy web site describes the plant exclusively as a DOE facility. 3/

We contacted the DOE Office of Worker Advocacy concerning the differing descriptions of the Huntington Pilot Plant. The Office advised us that the web site description is accurate. The Office further advised us that an upcoming revision to the published of facilities would delete the "AWE" reference for the Huntington facility.

As the foregoing indicates, the DOE Office of Worker Advocacy views the Huntington Pilot Plant as a DOE facility. Because the applicant has stated that the worker was employed at the facility, we are remanding the application for further consideration.

3/ See www.eh.doe.gov/advocacy.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy, Case No. TIA-0015 be, and hereby is, granted as set forth in Paragraph 2 below.
- (2) The application is remanded to the DOE Office of Worker Advocacy for further processing.
- (3) This is a final order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: December 23, 2002

